



4310-05-P

DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-259-FOR; Docket ID: OSM-2018-0004 S1D1S SS08011000 SX064A000

189S180110; S2D2S SS08011000 SX064A000 18XS501520]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Kentucky regulatory program, hereinafter the Kentucky program, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Kentucky seeks to revise its program to include statutory changes that remove the requirement to permit the area overlying underground mine works and amend related public notification requirements. Kentucky also seeks to revise or add administrative regulations that implement the statutory changes, define necessary terms, prescribe how underground permitting would be addressed moving forward, remove the requirement to submit a preliminary application, and update required forms. This document gives the

times and locations that the Kentucky program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. KY-259-FOR, Docket ID: OSM-2018-0004, by any of the following methods:

- Mail/Hand Delivery: Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.
- Fax: (859) 260-8410
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional

information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Lexington Field Office or the full text of the program amendment is available for you to read at www.regulations.gov.

Mr. Michael Castle, Field Office Director, Lexington Field Office

Office of Surface Mining Reclamation and Enforcement

2675 Regency Road, Lexington, Kentucky 40503.

Telephone: (859) 260-3900

Email: *mcastle@osmre.gov*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. John D. Small, Acting Commissioner

Kentucky Department for Natural Resources

300 Sower Boulevard, Frankfort, Kentucky 40601

Telephone: (502) 564-6940

Email: johnd.small@ky.gov

FOR FURTHER INFORMATION CONTACT:

Mr. Michael Castle, Field Office Director, Lexington Field Office

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SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program effective May 18, 1982. You can find

additional background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register**, (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated February 6, 2018, Kentucky sent OSMRE an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.), that includes changes to statutory provisions of the Kentucky Revised Statutes (KRS) and changes to its Kentucky Administrative Regulations (KAR) (Administrative Record No. KY-259-49). On March 20, 2018, and July 26, 2018, Kentucky sent OSMRE clarifying information in the form of marked-up regulations that identify the additions and deletions that were made to the existing regulatory provisions (Administrative Record Nos. KY-259-1 through 48 and KY-259-50).

The General Assembly of the Commonwealth of Kentucky enacted statutory changes through House bill 234 on March 27, 2017, and the changes became effective on June 29, 2017. The statutory changes involved removing Kentucky's requirement to permit the area overlying underground mine works or "shadow area." The changes are codified at Chapter 350, *Surface Coal Mining*, sections 350.055 and 350.060 of the Kentucky Revised Statutes (KRS). Due to the requirements of the bill, the Kentucky Department for Natural Resources was required to promulgate administrative regulations

to define necessary terms and provide information on how underground permitting would be addressed moving forward. The administrative regulations were promulgated to incorporate these new requirements at Title 405 KAR, *Energy and Environment Cabinet, Department for Natural Resources*. On January 1, 2018, the Kentucky Legislative Research Commission approved the revisions to the administrative regulations, which address the revised statutory requirements mentioned above as well as revisions that address preliminary applications and forms. The revised statutory provisions of 350 KRS and new and revised administrative regulations of 405 KAR are described below:

A. Statutory Revisions – Changes at KRS 350, *Surface Coal Mining*.

1. KRS 350.055, *Publication of Notice of Intention to Mine by Permit Applicant, Notification of Various Local Government Bodies by Cabinet*. Kentucky seeks to revise its statutory provision at KRS 350, section 1(3)(b), by requiring that a public notice of the filing of an application include, but not be limited to, the location, ownership, and boundaries of the permitted area, rather than the boundaries of the mining site, as previously provided.

2. KRS 350.060, *Permit Requirement, Contents of Application, Fee, Bond, Administrative Regulations, Successive Renewal, Auger Mining of Previously Mined Area, Exempt Operations*. Kentucky seeks to revise its statutory provision at KRS 350.060, section (12), by removing the requirement that all the areas overlying underground workings be permitted.

B. Regulatory Revisions - Changes at KAR 405, *Energy and Environment Cabinet, Department for Natural Resources*. Kentucky seeks to revise its administrative regulatory provisions that address the statutory changes noted above by revising the definition of “permit area”; adding the definition of “shadow area”; revising other sections affected by the permit area definition change; and addressing underground mining requirements that relate to permit revisions, right of entry, application requirements, criteria for approval, bonding requirements, active acre/acreage fees, cost recovery, permanent abandonment of operations, and temporary cessation of operations. Kentucky seeks to revise other administrative regulations not affected by the statutory provisions. These revisions involve preliminary permit applications and updates to standard forms. The following sections of 405 KAR are revised:

1. 7:001, *Definitions for 405 KAR Chapter 7*. Kentucky seeks to revise its administrative regulations at 7:001, *Definitions for 405 KAR Chapter 7, General Provisions*, by revising the definition of *permit area* and adding the definition of *shadow area* as follows:

a. Definition of Permit Area: The definition of “*permit area*” at Section 1.(61) is being changed from:

“the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.”

to:

“the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee’s performance bond pursuant to 405 KAR Chapter 10 and that includes the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations pursuant to the permit, including all disturbed areas. Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, could be excluded from the permit area.”

b. Definition of Shadow Area: The definition of “*shadow area*” is added to the list of definitions at subsection (74). A shadow area is defined as the surface area overlying underground mine works and surface areas associated with auger and in situ mining.

2. *Other Regulations that Include the Definitions of Permit Area and Shadow Area*:

Kentucky seeks to revise the following administrative regulations at 405 KAR that include the revised definition of *permit area* and/or the new definition of *shadow area* as defined by 405 KAR 7:001:

- 8:001, Definitions for 405 KAR Chapter 8, (Permits). Section 1, *Definitions*, subsection (82) for permit area and subsection (109) for shadow area;
- 10:001, Definitions for 405 KAR Chapter 10, (Bond and Insurance Requirements). Section 1, *Definitions*, subsection (37) for permit area;

- 12:001, Definitions for 405 KAR Chapter 12, (Inspection and Enforcement)
Section 1, *Definitions*, subsection (20) for permit area; and
 - 16:001, Definitions for 405 KAR Chapter 16, (Performance Standards for Surface Mining Activities), Section 1, *Definitions*, subsection (77) for permit area and (99) for shadow area.
 - 18:001, Definitions for 405 KAR Chapter 18, (Performance Standards for Underground Mining Activities), Section 1, *Definitions*, subsection (80) for permit area and (101) for shadow area,
 - 20:001, Definitions for 405 KAR Chapter 20, (Special Performance Standards),
Section 1, *Definitions*, subsection (52) for permit area and (66) for shadow area.
3. *Revised Regulations that Involve the Permit Area and Shadow Area:* Kentucky seeks to revise the following administrative regulation sections at 405 KAR that apply to the permit area as well as the shadow area by adding *shadow area* to many provisions that previously only mentioned the *permit area*, since the shadow area is no longer included within the definition of permit area.
- 7:001, Definitions for 405 KAR Chapter 7 (General Provisions);
 - 7:095, Assessment of civil penalties;
 - 8:001, Definitions for 405 KAR Chapter 8 (Permits, underground coal mining permits, and permits for special categories of mining;
 - 8:010, General provisions for permits;
 - 8:040, Underground coal mining permits;

- 16:001, Definitions for 405 KAR Chapter 16 (Performance Standards for Surface Mining Activities);
- 16:110, Surface and groundwater monitoring;
- 18:010, General provisions (Chapter 18: Performance Standards for Underground Mining Activities (definitions, general provisions, casing and sealing of underground openings, general hydrologic requirements, and surface and groundwater monitoring);
- 18:040, Casing and sealing of underground openings;
- 18:060, General hydrologic requirements;
- 18:110, Surface and groundwater monitoring;
- 18:260, Other facilities; and
- 20:080, In situ processing

The revised regulations at the sections noted above add the word *shadow area* within many subsections of the regulations. They involve subject areas, including, but not limited to: other definitions, permit applications, maps and drawings, protection of the hydrologic balance; prohibited mining areas; general requirements for baseline geologic and hydrologic information, surface and groundwater monitoring, fish and wildlife information, land use information, the mine reclamation plan, and utility installations.

4. *Underground Mining Regulations.* Kentucky seeks to revise or add the following provisions that pertain to underground mining operations.

- a. 8:010, *General provisions for permits*. Kentucky seeks to revise Section 2, *General Requirements*, subsection (2)(a) by adding that the provisions of this section also apply to underground only operations, in addition to surface coal mining and reclamation operations. Kentucky seeks to revise Section 20, *Permit Revisions*, by adding subsection (3)(g), which requires that extensions of the underground mining area that are not incidental boundary revisions and do not include planned subsidence or other new proposed disturbances shall be considered minor permit revisions.
- b. 8:040, *Underground coal mining permits*. Kentucky seeks to revise Section 4, *Right of Entry and Right to Mine*, subsection (3) to add that nothing in the regulation shall be construed to authorize the cabinet to require right of entry for shadow areas. Kentucky seeks to revise Section 25, *MRP; Existing Structures*, subsection (1)(d) by deleting a part of the regulation. The regulation requires the application include a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. Part of the description includes a showing, including relevant monitoring data or other evidence, of whether the structure meets the performance standards of 405 KAR Chapters 16 through 20. It also requires that if the structure does not meet those performance standards, the application should provide a showing of whether the structure meets the interim performance standards of 405 KAR Chapter 3. With this change, Kentucky is removing the requirement to provide a showing of whether the structure meets the interim performance standards.

- c. 8:050, *Permits for special categories of mining*. This regulation establishes permit requirements for special categories, which include mining on prime farmland, augering, in situ processes, off-site coal preparation plants, mountaintop removal mining, and mining on steep slopes. Kentucky seeks to add Section 9, *Underground Only Permits*, to this regulation. The regulation applies to an underground only operation that does not have a surface disturbance and includes provisions that involve application requirements, criteria for approval, and bonding requirements.
- d. 10:001, *Definitions for 405 KAR Chapter 10*. This regulation defines certain essential terms used in Chapter 10, *Bond and Insurance Requirements*. Kentucky seeks to revise Section 1, *Definitions*, subsection (d) by deleting the statement that an active area does not include the acreage of a permit that is permitted and bonded for underground acreage only.
- e. 20:090, *Underground only permits*. Kentucky seeks to add this new regulation to its program. This chapter sets forth certain performance standards for underground only permits. Its provisions address cost recovery, permanent abandonment of operations, and temporary cessation of operations.

5. *Other Regulatory Changes*

- a. Section 8:010, *General Provisions*. Kentucky seeks to revise Section 4, *Preliminary Requirements*, subsections (1) and (2), by revising the regulations to no longer require a preliminary application for a permit, but provide the option to submit a preliminary application. Section 5, *General Format and Content of Applications*,

subsection (c) of this section is revised to remove the Preliminary Application form from the list of forms required to be submitted with a permit application. Section 26, *Incorporation by Reference*, Subsections (a), (d), and (k) of this section are revised to reflect 2017 updates to the following documents: Preliminary Application; Technical Information for a Mining Permit; and Application for Renewal of a Mining Permit. In addition, the following form is added: Application for a Coal Marketing Deferment, dated August 2017.

Minor changes such as edits, renumbered paragraphs, and changes in reference citations are also included.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of Kentucky's State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to

and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We will conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 30, 2018.

Thomas D. Shope,

Regional Director

Appalachian Region

Editorial note: This document was received for publication by the Office of the Federal Register on April 26, 2019.

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